

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 04-10780-MEL

TOBY AMES,
Plaintiff,

v.

STAR REALTY TRUST, AUGUSTUS CIULLA
and ROSE CIULLA,
Defendants.

JURY TRIAL DEMANDED

**ANSWER OF DEFENDANTS STAR REALTY TRUST, AUGUSTUS CIULLA AND ROSE CIULLA
TO COMPLAINT**

NOW COME the defendants Star Realty Trust, Augustus Ciulla and Rose Ciulla, and
answer the complaint as follows:

The Parties

1. Answering defendant is without information to form a belief as to the truth of the
allegations contained in this paragraph of the complaint, and accordingly, denies these
allegations and demands proof thereof at the time of trial.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

General Factual Allegations

7. Denied as stated. It is admitted only that the Star Realty Trust, and Augustus and

Rose Ciulla solely in their capacity as trustees of that trust and not individually, owned the dock in question. The remaining allegations of this paragraph of the Complaint are denied.

8. Denied as stated. It is admitted only that the Star Realty Trust, and Augustus and Rose Ciulla solely in their capacity as trustees of that trust and not individually, owned the dock in question. The remaining allegations of this paragraph of the Complaint are denied.

9. Denied as stated. It is admitted only that the Star Realty Trust, and Augustus and Rose Ciulla solely in their capacity as trustees of that trust and not individually, owned the dock in question. The remaining allegations of this paragraph of the Complaint are denied.

10. Denied.

Jurisdiction

11. Denied as stated. It is admitted only that based, on the allegations in the Complaint, there is diversity of citizenship between the plaintiff and defendants. The remaining allegations of this paragraph of the Complaint are denied.

Count I - Negligence

12. Answering defendant re-avers it answers to paragraphs 1-11 as if set forth fully herein.

13. The answering defendant is advised by counsel and therefore avers that the allegations contained in this paragraph of the Complaint are matters of law to which no response is required, and accordingly, these allegations are neither admitted nor denied and proof is demanded at the time of trial. To the extent this paragraph of the complaint is deemed to contain allegations of fact, they are denied.

14. Denied.

15. Denied.

16. Denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The sole and proximate cause of the plaintiff's alleged injuries was the plaintiff's failure to exercise due care.

THIRD AFFIRMATIVE DEFENSE

The plaintiff's injuries, if any, resulted from the negligence and/or intentional acts of a third person, which acts the defendant had no reason to anticipate and of which person the defendant had no knowledge, and over whom they had no control.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff was acting in violation of law, statute, regulation or ordinance, thereby barring recovery.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff's damages were caused by the plaintiff's own comparative negligence, and accordingly, the plaintiff's action should be dismissed or their damages proportionally reduced in accordance with the provisions of M.G.L. c. 231B.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff's Complaint should be dismissed for insufficiency of service of process.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiff is barred from recovery because this action has not been brought within the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction based upon a failure of diversity of citizenship, and accordingly, the complaint should be dismissed.

NINTH AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction based upon a failure of proof of the amount in controversy, and accordingly, the complaint should be dismissed.

TENTH AFFIRMATIVE DEFENSE

The complaint should be dismissed for failure to join indispensable parties.

ELEVENTH AFFIRMATIVE DEFENSE


The defendant intends to add and rely upon such other and further defenses as may become apparent during the discovery process in this action, and reserves the right to amend its answer to assert such defenses.

THE DEFENDANT DEMANDS A TRIAL BY JURY ON ALL ISSUES.

Respectfully Submitted,

STAR REALTY TRUST ET AL
BY THEIR ATTORNEYS
COGAVIN AND WAYSTACK

5/18/04
Date

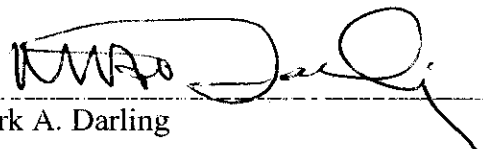


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CERTIFICATE OF SERVICE

I, Mark A. Darling, hereby certify that on May 18, 2004, I served the within document by first class mail, postage prepaid, to the following:

David F. Anderson, Esquire
Latti & Anderson, LLP
30-31 Union Warf
Boston, MA 02109


Mark A. Darling